

CARITRAṂ PUSTAKARAṆE

The fact that litigation in classical Hindu law « rests on four feet » (*catuṣpād*) is well known. The texts enumerating and defining the four elements have been discussed repeatedly in recent scholarly literature¹. Most of these writings center on the fact that, among *dharma*, *vyavahāra*, *caritra*, and *rājaśāsana*, each latter one *bādhate* « checks, prevents, sets aside », the preceding one(s). This leads to various — conflicting — theories on the relative role of the four « feet », and, especially, to efforts at explaining the obvious, but unexpected, importance given custom and royal decrees.

This article does not intend to deal with the relations between *dharma*, *vyavahāra*, *caritra*, and *rājaśāsana*. It will concentrate on *caritra*, and, more specifically, on one term which has been used — once(!) — in connection with it: *puṣṭakaraṇa*.

The term *caritra* has been defined by most texts in which the « four feet » of *vyavahāra* have been enumerated. One of the simplest definitions appears in a verse attributed to Vyāsa (Dharmakośa p. 235):

*deśasthitiḥ pūrvakṛtā caritraṁ samudāhṛtam*².

Elsewhere, in a stanza attributed to Bṛhaspati (9.6; Dhko 99), *deśasthiti* occurs again, but as one of two types of *caritra*, the other one being based on *anumāna*:

*anumānena nirṇātaṁ caritraṁ iti kathyate;
deśasthityā dvitīyaṁ tu śāstravidbhir udāhṛtam.*

1. Especially R. LINGAT, *Les quatre pieds du procès*, in JA 250 (1962), pp. 489-503. For bibliography, see J. D. M. DERRETT, *Custom and Law in Ancient India*, in « Religion, Law and the State in India », London, 1968, pp. 148-70.

2. A discussion of the variant readings, with which this and other *smṛti* texts appear in commentaries and *nibandhas*, is beyond the scope of this article. Also, I uniformly adopt the reading *caritra*, even though *nibandhas* eventually use *carita*.

Jolly (2.23) translates:

« When a sentence is passed according to the inference (to be drawn from circumstantial evidence), it is termed (a decision based on) custom. When it is passed according to local usages, it is termed another sort (of a decision based on custom) by the learned in the law ».

In another stanza on *caritra*, also attributed to Bṛhaspati (1.20; Dhko 100) the two terms *deśasthiti* and *anumāna* appear again, in a different combination:

*deśasthityanumānena naigamānumatena ca
kriyate nirṇayas...*

In Jolly's (2.26) translation:

« When a decision is passed in accordance with local custom, logic, or the opinion of traders (living in that town)... ».

In the first Bṛhaspati stanza *anumāna* may indeed refer to « inference », namely the inference of guilt drawn from indications in the behavior of a certain individual. In the second Bṛhaspati quotation, however, as I have shown elsewhere³, *anumāna* is not derived from the root *anu-mā-*, but rather from *anu-man-*; it does not mean « inference », but « acceptance of, agreement on certain forms of behavior within a group of individuals ».

One thing is, therefore, clear from the preceding text: *caritra* invariably involves action, behavior, more often than not group behavior sanctioned by long standing; in other words: custom. I shall now quote another few *smṛti* texts to underscore that meaning.

First, a Bṛhaspati verse (1.21; Dhko 100) which in most *nibandhas* follows immediately after the one just quoted:

*viḥāya caritācāraṃ yatra kuryāt punar nṛpaḥ
nirṇayam...*

The commentators are unanimous: *caritācāraṃ pūrvapūrvācaritam ācāram*⁴. Jolly (2.27) translates accordingly: « Where a king, disregarding established usage, passes a sentence... ».

Second, there is the following stanza attributed to Kātyāyana (37; Dhko 103):

*yad yad ācaryate yena dharmyaṃ vādharmyam eva vā
deśasyācāraṇān nityaṃ caritraṃ tad dhi kīrtitam.*

3. L. ROCHER, *Anumāna in the Bṛhaspatismṛti*, in « Annals of Oriental Research Silver Jubilee Volume », 1975, pp. 34-42.

4. E.g., *Kṛtyakalpataru*, *Vyavahārakāṇḍa*, p. 262; *Viramitrodaya*, *Vyavahāprakāśa*, p. 89.

Kane translates:

« Whatever a person practices, whether it be according to dharma (the letter of the law) or not, because it is the invariable usage in a country, is declared to be *caritra* (usage) ».

Finally, a stanza of Pitāmaha (Dhko 105) exhibits a variant on Kātyāyana's:

*yad yad ācarati śreṣṭho dharmyaṃ vādharmyaṃ eva vā
kulādideśācaraṇāc caritraṃ tat prakīrtitam.*

Two other stanzas (Dhko 105) add examples of cases in which *caritra* ought to be the deciding factor in litigation:

*grāmagōṣṭhapuraśreṇisārthasēnānivāsīnām
vyavahāraś caritreṇa nirṇetavyo brhaspatiḥ;
deśapattanagoṣṭheṣu puragrāmeṣu vāsīnām
teṣām svasamayair dharmaśāstrato 'nyeṣu taiḥ saha.*

After all this we shall now turn to the definition of *caritra* as presented by Nārada (Mātrkā 1.11c; Dhko 92):

caritraṃ [sthitaṃ] pustakaraṇe.

This is Asahāya's commentary:

*yac caritraṃ pustakaraṇa ity uktaṃ tac caritraṃ iti
patrakabhūrjaciṛakasamputikādiṣu sākṣisvahasunibaddhaṃ
kṛtvā yo vyavahāraḥ pravartate sa caritraṃ ity ucyate.*

Jolly's translation follows Asahāya closely: « documentary evidence (rests) on declarations reduced to writing ». In other words, in this case:

caritra = « documentary evidence ».

Asahāya's interpretation also seems to be supported by other commentators. For instance, Bhavasvāmin, commenting on the Nāradyama-nusaṃhitā (1.11), says: *lekhyena nirṇiyate tac caritraṃ*. The Smṛticandrikā (III, p. 25) simply states: *pustakaraṇaṃ lekhyam*.

The reactions of modern scholars are most interesting. Lingat not only follows Jolly's translation: « *caritra* repose sur des documents écrits »⁵; he actually defends it: « Le mot *pustakaraṇa* est partout glossé par *lekhyā* ou *likhita*. Il désigne donc la preuve écrite, par opposition à *vyavahāra* qui désignerait exclusivement la preuve par témoins (*sākṣiṣṭhita*) »⁶.

5. R. LINGAT, *Les quatre pieds*, p. 493.

6. R. LINGAT, *Les quatre pieds*, p. 496. Cf. p. 497: « ... il n'est pas anormal que le mot *caritra* dans notre formule ait servi à désigner la preuve écrite, par une métonymie analogue à celle qui a fait de *vyavahāra* le synonyme de preuve testimoniale ».

Others are more cautious. Derrett⁷ quotes Jolly's interpretation, but he inserts a question mark: « *Caritra* (documentary evidence[?]) is based on declarations reduced to writing ». Renou⁸ warns that it is at least « sujet à caution ». Varadachariar⁹ is even more negative: « Asahaya's commentary no doubt refers to some kinds of documents but is far from intelligible. I venture to doubt if on the strength of it Dr. Jolly was justified in rejecting the suggestion... made by other commentators that Charitra in this verse refers to "usage" ».

Kane¹⁰ exhibits a different approach: he maintains the traditional meaning of *caritra* « custom », but combines it with Asahāya's reference to written documents: « "*Caritraṃ pustakaraṇaṃ*" means that... usages are valid means of decision if they have been written down by the king ». Similarly, Rangaswami Aiyangar¹¹ interprets *pustakaraṇa* as « customary law, as recorded in books ». The index to the Vyavahāra-māṭṛkā volume of the Dharmakośa (p. 39) also resorts to this type of combination: « *pustakaraṇa* = written document; book of traditional law ».

In fact, this idea of « customs reduced to writing » also seems to go back to the time of the nibandhakāras. For instance, the Parāśaramādhaviya (p. 19) has the following note on *pustakaraṇa*:

karṇātakadeśe balān mātulasutāvivāho na doṣāya, keraladeśe kanyāyā ṛtumatītvam na doṣāyetyevamādikas taddeśasamayās; tatra tatra pattrādiśāsane 'vatiṣṭhate.

Mitramiśra's Vyavahāraprakāśa (p. 7) attributes a similar interpretation to Caṇḍeśvara:

*Caṇḍeśvareṇa tu caritraṃ pustakaraṇam iti paṭhitvā puṣṭaṃ pañjikety arthaḥ; tatkarāṇam adhikaraṇam yasyeti vyāhṛtam*¹².

At this point I would like to introduce two other texts, which define *caritra* in a different way, the only two texts also which, like Nārada, use the formula:

nominative + *sthita* + locative.

7. J. D. M. DERRETT, *Custom and Law*, p. 154, n. 2.

8. L. RENOU, *Etudes védiques et pāṇinéennes*, vol. XI, Paris, 1963, p. 7.

9. S. VARADACHARIAR, *The Hindu Judicial System*, Lucknow, 1946, pp. 129-30.

10. P. V. KANE, *History of Dharmaśāstra*, vol. III, Poona, 1946, p. 261. Quoted verbatim by A. S. NATARAJA AYYAR, *Mīmāṃsā Jurisprudence (The Sources of Hindu Law)*, Allahabad, 1952, p. 83.

11. K. V. RANGASWAMI AIYANGAR, *Introduction to Vyavahārakāṇḍa of Kṛtyakalpataṛu*, Baroda, 1958, p. 7.

12. Cf. L. ROCHER, *Caṇḍeśvara's Vyavahāraratnākara*, in JOIB 5 (1956), p. 264.

Both the Agnipurāṇa (253.5a) and Kauṭilya's Arthaśāstra (3.1.40c) state:

caritraṃ [sthitaṃ] saṅgrahe puṃsām.

There is no reason to doubt Kangle's translation:

« customs [are based] on the commonly held view of men »¹³.

Let us now return to Nārada, to notice that, besides the fact that *pustakaraṇe* — eventually *pustakaraṇam* — appears in no other text, it is also not the only reading attested for the Nāradaśmṛti. Jolly himself noted the variant *praśnakaraṇe* in three Nārada manuscripts. Bhavaśvāmin, immediately after the interpretation mentioned earlier, takes notice of the reading of the Agnipurāṇa and the Arthaśāstra as a *varia lectio* for the Nāradyamanusamhitā:

caritraṃ saṅgrahaḥ puṃsām iti pāṭhāntaram. pāramparyāvicchinnaśmṛtidesādhiṣṭhānagaṇadharmāḥ satpuruṣaiḥ parigrhītaḥ; tasmin sthita iti sambandhaḥ.

Far more important is another variant reading, adopted in the Vyavahāraprakāśa of the Vīramitrodaya. Mitrāmīśra (p. 7) explicitly rejects Caṇḍeśvara's reading *caritraṃ pustakaraṇam*, as follows:

tad rūḍhihīnatvād vacanāntarāsaṃvādāc ca heyam.

He prefers to follow the Parāśaramādhavīya:

*atra Mādhavīye caritraṃ tu svīkaraṇam iti pāṭhaṃ likhitvā deśa-cāraś caritraṃ tatsvīkāre tu tad eva nirṇayahetur iti vyākhyātam*¹⁴.

Taking Nārada, Kauṭilya, and the Agnipurāṇa together, we obtain the following variants for the definition of *caritra*:

*pustakaraṇe
praśnakaraṇe
tu svīkaraṇe
saṅgrahe puṃsām*

13. Cf. Śrīmūla, *caritraṃ lokācāraḥ saṅgrahe grāmasamūhe daśagrāmyādaḥ puṃsām pratiṣṭhitam*.

14. Cf. Parāśaramādhavīya, vol. III, pp. 10 and 17. Kane also seems to prefer this reading: « Nārada's text as read by Caṇḍeśvara: *caritraṃ pustakaraṇe*, means "documentary evidence", but Par. M. (III.10) reads *caritraṃ tu svīkaraṇe* » (*Kātyāyana*, p. 125 n.). Cf. *History of Dharmaśāstra*, vol. III, p. 261: « "*caritraṃ tu svīkaraṇe*" ... means "usages become the rule of decision when they are accepted as valid by the people and by the courts" ».

Faced with this situation we can adopt two different attitudes toward the text of Nārada. One can accept the fact that, from very early times, there have been variant readings, — which however does not solve the problem of the strange and unique reading *pustakarāṇe*. Or one can go on the assumption that there was one original reading which has been corrupted in different ways¹⁵. If that be the case, I would like to propose *puṃsvakarāṇe*¹⁶ or *puṃsvīkarāṇe*: « *caritra* (acceptable, recognized custom) rests on its being accepted by men »¹⁷.

University of Pennsylvania.

15. There may have been other corruptions which have not been noticed in the editions. E.g., *Kṛtyakalpataru*, *Vyavahārakāṇḍa*, p. 260, notices *dusthakarāṇe*.

16. Cf. Pāṇini 1.3.56: [*ātmanepadam*] *upād gamah svakarāṇe*, however there with the meaning « to marry ».

17. After these materials had been collected, I noticed that at least one author (J. J. MEYER, *Das altindische Buch vom Welt- und Staatsleben*, Leipzig, 1926, p. 241) has tried to emend *pustakarāṇe*. He proposes *puṃsakarāṇe* or *puṃsāṇi karāṇe*, but would prefer *puṃsacarāṇe* or *puṃsāṇi carāṇe*.